letting go of the deceased's hand. In any case this was a question for the jury to consider under the direction of the Judge, and this question was not left to them.

The knife which caused the deceased's wound was a heavy knife with a broad blade coming to a point and with one sharp edge.

To this Court it is doubtful whether the wound could have been inflicted in the manner described by the accused, but it was for the jury to consider whether it was caused in this manner, whether the accused intended the wound or a similar wound to be inflicted, and if not, whether the wound was such as might reasonably have been expected to result from suddenly releasing the arm of the deceased. These questions were not left to the jury.

Is this then a case to which the proviso to s. 6, sub-s. 1 of the Court of Criminal Appeal Ordinance can be applied? Would the jury have convicted had the defence of accident been fully put to them? *Rex* v. *Dyson*, 1 Cr. App. Rep. at p. 15. *Rex* v. *Stoddart*, 2 Cr. App. Rep. at 245.

The proviso must be used with great caution especially when the defence has not been fully placed before the jury by either Judge or counsel.

Had the appellant been convicted of murder after a full and adequate summing-up this Court would not have quashed the conviction. But here a defence raised in the accused's evidence has not been adequately put and this Court cannot say that the evidence was "so cogent and convincing that the conclusion is not to be resisted that the jury properly directed, would certainly have arrived at the same conclusion.

The conviction is quashed.

Appeal allowed.

[COURT OF CRIMINAL APPEAL]

McELWAINE, C.J., MILLS & PEDLOW, J.J.

August 25, 1938.

REX v. TAN CHU CHOOI.

[SINGAPORE CRIMINAL APPEAL No. 22 of 1938]

The Penal Code (Cap. 20), s. 489B—Using as genuine counterfeit currency notes—S. 224,—Escaping from lawful custody—Criminal Procedure Code, (Cap. 21), s. 448—Misjoinder of charges.

An accused was charged under s. 489B of the Penal Code with the offence of using as genuine forged currency notes having reason to believe the same to be counterfeit. He pleaded not guilty. At his trial he was charged not only with the above offence but on a second count for escaping from lawful custody an offence punishable under s. 224 of the Penal Code, to which he also pleaded not guilty. He claimed trial on both charges. Evidence was given in support of each charge. The Jury brought in a verdict of guilty on the first charge and the second charge was then withdrawn by the Crown Counsel who was prosecuting.

Held, that the joinder of the two charges was illegal and could not be legalised under s. 448 of the Criminal Procedure Code. The time for ascertaining whether or not there is a misjoinder is at the time when the accusation was made and not when the trial was concluded. It was immaterial that the misjoinder did not prejudice the appellant as the evidence of escape from custody could have been given as part of the evidence to substantiate the first charge.

CRIMINAL APPEAL.

Appellant in person.

Butterfield, Crown Counsel for the Crown.

The facts and arguments appear sufficiently from the judgment.

Cur. Ad. Vult.

The judgment of the Court of Criminal Appeal (**McELWAINE, C.J., MILLS & PEDLOW, JJ.**) was delivered by—

McELWAINE, C.J.—The appellant appeals against his conviction on a charge under s. 489 B of the Penal Code of using as genuine eight counterfeit ten dollar notes of Straits Settlements currency having reason to believe the same to be counterfeit.

The defence was that he made payment of an account with these notes which the appellant (who kept a pork butcher's shop) had received in the ordinary course of his business.

It is unnecessary to say more about the charge than this, there was some evidence to go to the jury.

It appears, however, that at his trial the appellant was charged not only with the above offence but in a second count with an offence of escaping from lawful custody, an offence punishable under s. 224 of the Penal Code.

The appellant claimed trial on both charges. Evidence was given in support of each charge.

In summing up the learned trial Judge directed the jury on the first charge only. After the jury had brought in a verdict of guilty on the charge of using the counterfeit notes the following dialogue took place:

"His Lordship:—What about the other charge? Had it better be put to him?

Crown Counsel:—He did claim trial, my Lord, on the opening day and gave an explanation.

His Lordship:—Tan Chu Chooi, you have been found guilty on the first charge; do you still claim to be tried about the escape?

Accused:—I am not guilty, my Lord, on the second charge.

Crown Counsel:—With your Lordship's permission I think I will withdraw it.

The accused was then discharged on the second charge.

Section 173 of the Criminal Procedure Code enacts that:

> "For every distinct offence of which any person is accused, there shall be a separate charge and every such charge shall be tried separately except in the cases mentioned in sections 174, 175, 176 and 179."

The joining of a charge of using counterfeit notes on the 9th of April with a charge of escaping from police custody on the 10th of April is not allowed under any of the four sections mentioned in s. 173. The joinder was therefore illegal and cannot be overlooked under s. 448.

> "The remedying of mere irregularities is familiar in most systems of jurisprudence, but it would be extraordinary extension of such a branch of administering the criminal law to say that when the Code positively enacts that such a trial as that which has taken place here shall not be permitted that the contravention of the Code comes within the description of error, omission or irregularity."

Subramania Iyer v. *King Emperor*, L.R. 28 Ind. App. at p. 263, I.L.R. 25 Mad. 61: *Raman Behari Das* v. *Emperor*, I.L.R. 41 Cal. 722. *Krishnaji Anant Dange* v. *Emperor*, A.I.R. (1932) Bom. 277. *Muthusami Pillai* v. *Government Tahsildar of Ramnand*, A.I.R. (1933) Mad. 434.

It was suggested by Mr. Butterfield that as the second charge was not put to the jury in the summing-up and as no verdict was given on this charge and as it was withdrawn by the Crown Counsel who prosecuted, there was no misjoinder. In view, however, of the decision of the Judicial Committee in *Choukhani* v. *King Emperor*, 54 T.L.R. 454 that the time for ascertaining whether or not there is misjoinder is at the time when the accusation is made and not when the trial was concluded Mr. Butterfield's suggestion is untenable.

It is immaterial that the misjoinder did not prejudice the appellant as the evidence of escape from custody could have been given as part of the evidence to substantiate the first charge. Evidence Ordinance, s. 8. *Rex* v. *Ellis*, 5 Cr. App. Rep. at pp. 53 and 54 (1910) 2 K.B. 746.

As the law stands the misjoinder vitiates the conviction.

It is apparent from the passage quoted from *Subramania Iyer's* case that misjoinder is not an irregularity and that the provision added to s. 6 sub-s. 2 of the Court of Criminal Appeal Ordinance by the Court of Criminal Appeal (Amendment) Ordinance 1937 does not empower this Court to order a new trial.

The conviction is quashed.

Appeal allowed.

[COURT OF CRIMINAL APPEAL]

McELWAINE, C.J., TERRELL & HORNE, JJ.

July 29, 1938.

REX v. UIN LIAT.

[PENANG CRIMINAL APPEAL No. 21 of 1938]

The Evidence Ordinance (Cap. 13), s. 134 —Uncorroborated evidence of accomplice—Misdirection.

In a criminal trial the jury must be adequately warned about the danger of convicting on the uncorroborated evidence of an accomplice. When the Court of Appeal is satisfied that a material point has been clearly impressed upon the jury by counsel that the jury must have the matter correctly before them, an omission in the summing up can properly be overlooked. But this does not apply to a serious misdirection as distinct from non-direction.

CRIMINAL APPEAL.

Appellant in person.

Howe, Crown Counsel for Crown.

The facts and arguments appear sufficiently from the judgment.

Cur. Ad. Vult.

The judgment of the Court of Criminal Appeal (**McELWAINE, C.J., TERRELL & HORNE, JJ.**) was delivered by—

McELWAINE, C.J.—The accused appeals against his conviction on a retrial of a charge of trafficking in forged currency notes at Penang on 24th August 1937.

A large volume of evidence was adduced with a view to proving trafficking by other persons who have already been convicted.

A police inspector Kay who posed as the would be purchaser of the notes insisted on taking delivery at Tong Lok Hotel which was being watched by other police who raided the premises on a prearranged signal from Inspector Kay when the accused and others were arrested.

Apart from the evidence of a convicted accomplice Boo Bun Chin, the only evidence implicating the accused was the undenied fact that he arrived at 4.30 p.m. at the Hotel accompanied by Boo Bun Chin and carrying a cardboard box which admittedly came from accused's shop and which was full of counterfeit notes.

He placed the box on a table at which were seated Inspector Kay and a Japanese with whom Inspector Kay had been negotiating for the sale of the notes. Appellant then left the room.

The appellant appears to have carried on in conjunction with other activities the business of a vendor of scrap iron, and his evidence was that he negotiated with Boo Bun Chin about a sale of scrap iron to a Japanese and that it was for this purpose that he accompanied Boo Bun Chin to the Hotel.